U.S. Department of Labor

Office of Administrative Law Judges
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Issue date: 13Jul2001

CASE NO.: 1999-LHC-3029

OWCP NO.: 07-145364

In the Matter of:

RICHARD SCUDERI,
Claimant

vs.

EQUITABLE/HALTER SHIPYARDS,
Employer

and

RELIANCE NATIONAL INDEMNITY COMPANY, c/o Frank Gates
Carrier

APPEARANCES:

J. PAUL DEMAREST
On behalf of the Claimant

DAVID S. BLAND, T.A.
DAVID A. STRAUSS
On behalf of Employer

BEFORE: JAMES W. KERR, JR.
Administrative Law Judge

DECISION AND ORDER

This proceeding involves a claim for benefits under the Longshore and Harbor Workers' Compensation Act ("the Act"), 33 U.S.C. § 901, et seq., brought by Richard Scuderi ("Claimant") against

his former employer, Equitable/Halter Shipyards ("Employer"), and its insurance carrier, Reliance National Indemnity Company, c/o Frank Gates ("Carrier").

The issues raised by the parties could not be resolved administratively, and the matter was referred to the Office of Administrative Law Judges for a formal hearing. The hearing was held on August 11, 2000, in Metairie, Louisiana.[1]

I. STIPULATIONS

At the commencement of the hearing, the parties stipulated (JX-1) and I find:

1. Claimant filed his LS-203 on August 29, 1997.

2. Claimant's Average Weekly Wage was $504.52.

II. ISSUES

1. Whether a job related injury or accident occurred.

2. Whether Claimant's wrists conditions are developmental and predated his employment with Employer and are thus unrelated to said employment.

3. Whether Claimant is limited to the scheduled injury for his hands.

4. Whether treatment by Dr. Faust, Dr. Brent and Dr. Williams was in contradiction of 33 U.S.C. 907(c)(2) and 20 C.F.R. 702.46.

5. Whether Claimant's pre-existing mental condition was aggravated by his employment with Employer, and if so, whether such aggravation was caused by his employment or the development and progressive nature of his wrist condition.

6. Date of Maximum Medical Improvement.

7. Whether Employer is entitled to Section 8(f) relief.

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[1] The following references will be used: TR. for the official hearing transcript; JX-__ for Joint exhibits; CX-__ for the Claimant's exhibits; and DX-__ for Employer's exhibits.

III. CHRONOLOGY AND CLAIMANT'S TESTIMONY

Claimant earned his GED when he was approximately twenty-one-years-old. Claimant's job history included performing odd jobs until hired by a swimming pool company as a helper, where he worked for approximately ten years. (TR. 25). Thereafter, his jobs included auto mechanic work, video poker machine repair and tree cutting. (TR. 25).

Claimant testified that his history of panic disorders prevented him from maintaining steady employment. (TR. 25-26). In fact, Claimant has suffered from severe anxiety problems since about the age of five years old. (TR. 91-92). Dr. Jamison diagnosed Claimant with panic disorder when he was approximately twenty-five years old. (TR. 93). Claimant admitted that his ongoing history of panic attack-agoraphobia-anxiety disorder has made it difficult for him to stay employed. (TR. 95-108).

Prior to his working for Employer, Claimant briefly attended Nunez Community College to study computer engineering. However, he did not complete his studies there due to the Math and English requirements. (TR. 27).

Claimant began working for Employer on May 20, 1996, as an electrician. (TR. 27). Prior to beginning his employment, Claimant took a physical. (TR. 28). The Fitness for Duty Report reflected that Claimant had no physical or mental impairment that would disqualify him from performing the job in question. (DX-4). Claimant also testified that he had no limitations with regard to the use of his hands and/or wrists before beginning employment. (TR 29).

When Claimant began working for Employer, his job duties included grinding aluminum to cut out shapes, designing and tacking welding to the office building and the tool room. (TR. 31). Claimant testified that he started having trouble with his wrists when they were building the walls of the ship, for which everything was screwed to aluminum with a layer of rubber in between to prevent vibration. (TR. 36). Claimant testified he was using a drill about ten hours daily during that time.

Claimant testified that he completed the overhead task of insulating the ceiling of the boat, which was 185 feet long, for the entire length of the boat. (TR. 37). This task took about one week and often involved his hanging on the side while reaching out with the grinder to grind particular areas. (TR. 37). Claimant testified that this was very demanding work for him, but it was important to him as he was liked by Employer for doing such work.

Claimant testified that to compensate for the pain in his wrist, he would alternate hands while working. (TR. 39). His supervisor was aware of the problem and would place Claimant with a helper to do his work. (TR. 39). Often, he would take off work on Saturday to rest his hands and wrists. (TR. 40). As his condition worsened, he would go to the first aid office at lunchtime to ice his hands down, which

would allow the swelling to go down so he could finish the day's work.

When questioned whether he ever had an accident or traumatic event while on the job, Claimant was able to relate one such incident. One day while handing insulation to his co-worker, he stepped on a section of the boat that had no flooring. (TR. 41-42). Claimant's right leg went through the hole and he ended up on his side clutching a bracket with his hands. Claimant testified that he only injured his back, but used his hands to stop himself. Still, there is no record of such an accident

and Claimant admitted the only medical treatment he received while at Employer's facility was when he was treated for aluminum in his eye. Claimant testified that after he began to experience problems with his hands, he would go to the safety trailer to ice them. (TR. 50).

When Claimant could no longer take the pain in his wrists and hands, he reported such to Couch, who authorized an examination with Dr. Alfred Friedrichsen, which physician was chosen by Employer. (TR. 52-53). Employer's First Report of Injury or Occupational Illness was subsequently executed on July 3, 1997. (DX- 4). This report indicated that the injury occurred on August 16, 1996.

Claimant saw Dr. Friedrichsen on July 3, 1997, who referred Claimant to Dr. Robert Steiner. (TR-53). On July 7, 1997, Claimant was seen by Dr. Steiner for an evaluation and treatment. (CX-3, p. 1). He took x-rays of Claimant's hands and noted possible findings of Kienbock's Disease and bilateral carpal tunnel syndrome. (CX-3, p. 2). Dr. Steiner recommended EMG and nerve conduction studies, as well as a bone scan, limited to both wrists and hands. Dr. Steiner also released Claimant to light duty status. A bone scan was completed on July 30, 1997, which indicated diffuse markedly increased uptake involving the entire left wrist, consistent with degenerative change. (CX-3, p. 3). Dr. Steiner followed up with Claimant again on August 15, 1997, finding that Claimant had severe carpal tunnel syndrome worse on the left than the right. (CX-3, p. 4).

Dr. Steiner referred Claimant to Dr. Harold F. Stokes of Hand Surgical Associates, Ltd. for treatment. Dr. Stokes is a board certified orthopedic surgeon who has practiced in New Orleans, Louisiana since 1972. (DX-18, p. 6). Since 1989, Dr. Stokes has specialized in the treatment of conditions of the hands and wrists and the surgeries required to remedy those conditions. In addition to his certification by the American Board of Orthopedic Surgery, he also holds a Certificate of Added Qualifications in Surgery of the Hand issued by that same board. During the history of his practice, he has treated 3,000-4,000 patients with carpal tunnel problems and approximately fifty patients with Kienbock's disease. (DX-18, p. 7).

Dr. Stokes first examined Claimant on December 16, 1997. Following his examination, Dr. Stokes diagnosed Claimant with bilateral carpal tunnel syndrome and stage II-III Kienbock's disease on his left

wrist and possible stage I Kienbock's disease of the right wrist. (DX-18, p. 18). Dr. Stokes treated Claimant from September 1997 through January 2000. Dr. Stokes was deposed twice regarding his treatment and opinions, initially on November 30, 1998 and more recently on February 15, 2000. (DX-18). Regarding the cause of Claimant's carpal tunnel syndrome, Dr. Stokes testified in both depositions that, throughout the course of his treatment, he believed Claimant's carpal tunnel syndrome was caused directly by the Kienbock's disease and that the Kienbock's disease was not caused or aggravated by Claimant's employment with Employer. (DX-18, pp. 18-21, 94-97, 107).

During this time, Claimant had been placed on a light duty status and was working in the tool room. (TR. 58). Subsequently, Claimant was discharged from his employment and ten days post discharge, beginning October 6, 1997, he began receiving $125.00 weekly from Employer through a disability insurance policy. (TR. 58).

Claimant thereafter sought treatment on his own and without the consent of Employer from Dr. Claude Williams, who performed bilateral carpal tunnel surgery on November 18, 1997, and a partial fusion on Claimant's left wrist. (TR. 61-63, 123). Employer/Carrier denied payment for treatment with Dr. Williams. After the surgeries, Claimant returned to work; however, he allegedly experienced pain and swelling in his hands, which pain Dr. Williams attributed to Claimant's Kienbock's disease. (TR. 64; DX-23, pp. 198-99). Moreover, Dr. Williams opined that the Kienbock's disease was not related to Claimant's employment for Employer. (TR. 84).

Dr. Williams released Claimant to return to work light duty on February 11, 1998, which light duty restrictions Dr. Williams related to the Kienbock's disease. (DX-23, pp. 14-15). Claimant last worked in March of 1998, when he testified that he quit working due to pain and pursuant to Dr. Williams' orders. (TR. 64). Yet, the record indicates that Dr. Williams saw Claimant in March of 1998 and that he released him to work at that time. (TR. 89-90, 110-11). Claimant testified that Dr. Williams discontinued treating him because he had not paid all of his co-payments. (TR. 65).

Claimant next saw Dr. Walter Brent, who gave him a brace for his wrist. (TR. 66). Dr. Brent eventually referred Claimant to Dr. Donald Faust, who specializes in hand surgery. (TR. 67). Claimant testified that Dr. Faust recommended surgery on Claimant's left wrist. (TR. 70). Although, upon Claimant's last visit with Dr. Faust in June of 2000, Dr. Faust informed Claimant that his carpal tunnel syndrome was gone and he had reached MMI concerning his carpal tunnel syndrome. (TR. 83).

Claimant recently underwent a vocational rehabilitation evaluation at Riverside Rehab, which was completed by Emile Schmidt. (TR. 111-12). The evaluation stated that Claimant should be able to return to light duty employment.

Finally, Claimant testified that his panic disorder and the frequency of his panics attacks has increased since his workplace injury. (TR. 77). On May 7, 1997, prior to his alleged workplace injury, Claimant began treating with a psychiatrist, Dr. Kaleem Arshad. (TR. 78). At the time of the hearing, Dr. Arshad had prescribed Effexor and Ativan to treat Claimant's pre-existing panic disorder.

Also, on April 22, 1999, Dr. Culver, an expert in psychiatry, examined Claimant and diagnosed him with panic disorder, agoraphobia, alcoholism, desponic disorder, which is a form of depression, generalized anxiety disorder, either a learning disorder or an attention deficit disorder and some type of personality disorder, which in Dr. Culver's opinion has been ongoing since childhood. (DX-28, pp. 27, 32).

IV. TESTIMONY OF KRISTEN SCUDERI

Kristen Scuderi, Claimant's wife of eleven years, testified that Claimant has been having panic attacks since she has been married to him and prior to his employment for Employer. (TR.118, 135-36). Prior to his workplace injury, Claimant underwent treatment for panic disorder and was consuming alcohol and taking antidepressants at the same time. (TR. 119). Mrs. Scuderi noted that it was difficult for Claimant to work with the panic attacks. (TR. 120). Similarly, panic attacks affected all aspects of Claimant's life and their marriage. (TR. 137-39).

When Claimant began working for Employer he would go to work every day for ten hours and come home exhausted. (TR. 121). Mrs. Scuderi testified that Claimant drank less and did not have severe panic attacks during that time period. Scuderi testified that Claimant's behavior changed and he began having problems sleeping, as well as working, when his hands began hurting because they did not know what was going on. (TR. 121-23).

Mrs. Scuderi testified that Claimant had no injuries to his wrists before he started working for Employer. (TR. 123). When his wrists began giving him problems, Claimant could no longer pick up his children and would sleep with his hands straight up in the air.

Mrs. Scuderi assisted Claimant in locating a physician familiar with Kienbock's disease, Dr. Williams. (TR.123). Furthermore, she had to obtain a written rejection from Employer for the surgery recommended by Dr. Williams so that their personal healthcare provider would cover the procedure. (TR. 124-26).

Mrs. Scuderi testified that Claimant would still be working for Employer if he had not been injured. (TR. 126-28). Although, she admitted that even before he had problems with his wrists, Claimant had problems maintaining employment for any distinct amount of time due to his panic disorder. (TR. 131).

Mrs. Scuderi also testified that Claimant followed up requesting job applications from potential employers subsequent to his meeting with Nancy Favalora, vocational rehabilitation expert. (TR. 129). However, upon attempting to complete the applications, Claimant suffered from panic attacks, and it took several days to return the completed and signed applications to potential Employers. (TR. 130). Claimant has not gotten a call back from any such potential Employers.

V. TESTIMONY OF KEVIN COUCH, EMPLOYER'S SAFETY DIRECTOR

Kevin Couch (Couch), Employer's Safety Manager, worked for Employer in the same division as Claimant during Claimant's employment period for Employer. (CX-16, pp. 7-8). Couch knew Claimant because Claimant used to go to the safety trailer about once weekly and Couch would assist packing his hands in ice to alleviate pain. (CX-16. pp. 8-13). This went on for approximately 1 ½ months, with one hand being worse than the other. (CX-16, p. 13). As the weeks progressed, his condition got worse and Claimant went to the trailer twice a day, every day, to pack his hands in ice. (CX-16, p. 13). At that point, Couch advised Claimant that he should see a doctor and referred him to Dr. Friedrichsen. (CX-16, p. 14).

When questioned about records kept at the safety trailer, Couch testified that first aid logs were kept in the regular course of business. (CX-16, p. 14). Claimant informed Couch that he had a history of problems with his hands. Moreover, Couch testified that Claimant never reported a particular incident that caused him pain in his wrist. Couch testified that any time there is an injury in the yard, the injury would have been reported to him at the safety trailer. (CX-16, p. 11). No such accident resulting in injury to Claimant's hands was reported to Couch and he has no recollection of Claimant sustaining such an injury. (CX-16, pp. 25-26).

VI. VOCATIONAL REHABILITATION

A. Nancy Favaloro

Nancy Favaloro, certified rehabilitation counselor, met with Claimant on April 15, 1999, and conducted a vocational rehabilitation analysis. (DX-31, p. 11). Prior to her analysis she was provided with and reviewed all of the then existing medical and psychological documents regarding Claimant. (DX-31, pp. 12-13). She noted that Claimant's medical records, in particular Dr. Williams' reports, indicated Claimant could return to light duty work as of February 11, 1998. (DX-31, pp. 17-19).

During Favaloro's April 15, 1999 meeting with Claimant, he provided a complete history, including his educational background and work history. (DX-31, pp. 14-15). Claimant advised Favaloro that he

had a sporadic work history, which he attributed to his panic attacks. (DX-31, pp. 16-17). Claimant reported to Favalora that he was wearing a brace on his left arm most of the time, a brace on his right arm three to four times a week and that he was in pain, which pain had increased over the last three months. (DX-31, pp.17, 19-20). Also on that date, Claimant advised that he was not taking prescription medication. (DX-31, p. 20). He further advised that he took Goody's powder for pain and drank a five-liter box of wine each day. (DX-31, p. 21). Favaloro opined that Claimant's alcohol consumption impaired his ability to remain employable. Claimant moved his hands for exercise, but was not doing any type of physical therapy.

Favaloro noted Claimant's superior intelligence, as indicated on the previously administered Wechsler Adult Intelligence Scale. (DX-31, p. 22). In Favaloro's opinion, Claimant's past work required average aptitude and general intelligence. As such, she believed that he has the ability to learn new job tasks. (DX-31, p. 23). Thus, she looked for light work that would not require the use of Claimant's affected extremities. (DX-31, pp. 23-24). Based upon medical and psychological documents regarding Claimant, as well as her interview of Claimant, his transferable skills, his intelligence level, as well as his pleasant presentation, Favaloro completed a labor market survey and determined that there were a number of jobs available for Claimant ranging from $5.50 an hour to $10.00 an hour. (DX-31, pp. 22-24). Still, when asked, Claimant told Favaloro he did not feel that he could return to work because of his panic attacks, the pain in his hands and medication. (DX-31, pp. 25-26). Although, Claimant testified that he was taking no medication, other than over the counter Goody's powder, during that April 15, 1999 meeting with Favaloro.

Favaloro met with Claimant again on July 5, 2000, at which time he was accompanied by his wife, Mrs. Scuderi. (DX-31, p. 26). Upon that visit, she was provided with additional reports from Dr. Faust, Dr. Stokes, Dr. Brent, Thomas J. Meunier, Jr. (Claimant's vocational rehabilitation counselor) and a functional capacity evaluation (FCE) report done by physical therapist, Emile Schmidt. She noted that her review of these documents confirmed her prior understanding of Claimant's medical history and records, which indicated Claimant should be able to return to meaningful employment. (DX-31, pp. 26-28).

Following her interview with Claimant on July 5, 2000, Favaloro contacted Dr. Stokes and requested that he provide a clarification pertaining to his opinion about Claimant's ability to return to the work force. Favaloro testified that Dr. Stokes informed her that Claimant could perform light work tasks, such as writing or entering information into a computer and operating a cash drawer to keep records. (DX-31, pp. 36-37). Based upon this information, Favaloro conducted another labor market survey, for the purpose of identifying jobs that fell within the light duty description of the FCE and what the doctors had described Claimant's limitations to be. (DX-31, pp. 28, 36-37). In particular, Favaloro noted the importance of the FCE to a vocational rehabilitation counselor in determining and identifying employment

for a client. (DX-31, pp. 28-29).

However, as of July, 5, 2000, Claimant had not made any significant efforts to obtain employment. Actually, Claimant reported to Favaloro that it was not until a few days before his July 5, 2000 appointment with her that he attempted to complete two job applications. (DX-31, p. 32). At the time of their second meeting, Claimant advised Favaloro that he needed surgery to his left arm, as recommended by Dr. Faust. However, Dr. Faust actually testified that surgery was not required, but may help to reduce pain. Claimant was also wearing a brace on his thumb. (DX-31, p. 30). Claimant stated that he was taking psychiatric medications, occasionally taking Darvocet for pain and continued to consume alcohol as previously reported. (DX-31, p. 31). Claimant informed Favaloro that job hunting was causing him to have panic attacks, although he had no physical difficulty completing job applications. (DX-31, pp. 32-36).

With the above information, Favaloro conducted another labor market study, identifying numerous jobs. (DX-31, p. 37). The first job that she identified was a dispatcher with Pop-A-Lock, which is an entry level position starting at $5.50 an hour. (DX-31, pp. 38-39). The second job was at Dollar Rent-A-Car as a rental sales agent. (DX-31, p. 39). This entry level job involved greeting people, completing paperwork, with lifting requirements less than 20 pounds and paid $6.50 an hour. (DX-31, p. 39). Favaloro also identified a sales job at Circuit City involving operation of the cash register, standing and walking on the sales floor, with breaks to sit and lifting less than 20 pounds. During training, the rate of pay was $7.25 an hour. Upon completion of training, wages would have increased to $7.73 an hour or commission, whichever was greater, with most employees averaging $10.00 to $14.00 hourly after training. (DX-31, pp. 40-41). The fourth job was an unarmed gate guard with Vincent Guard, which paid $5.50 to $7.00 an hour and was an observation-type position. (DX-31, p. 42). The fifth position was a greeter with Hospitality Enterprises, which paid $7.00 an hour and was an entry level position. Finally, Favaloro identified a dispatching job for a tow truck company, described as a sedentary job paying $5.50 per hour. (DX-31, p. 43).

With the possible exception of the tow truck dispatcher position, each of these jobs provided the opportunity for promotion. Based upon Favaloro's impression of Claimant and his intellectual abilities, she believed he was a good candidate for promotion in those types of jobs. (DX-31, p. 44). Nevertheless, based upon her two meetings with Claimant and his representations to her, she concluded that Claimant had little interest in returning to work, as indicated by Claimant's statement to Favaloro that he had applied for two jobs only because he was being forced to apply for them. (DX-31, pp. 44-45).

B. Thomas J. Meunier

On February 11, 2000, Claimant met with vocational rehabilitation counselor Meunier so that

Meunier could complete a vocational analysis of Claimant's transferable employment skills. (DX-25, pp. 6, 18, 21-27). On April 12, 2000, Meunier prepared a report documenting his findings from that meeting with Claimant and based on Claimant's employment and medical records reviewed by Meunier subsequent to his meeting with Claimant, including, but not limited to: (1) the FCE as completed by Riverside Rehab upon Meunier's request; (2) Drs. Arshad, Brent, Cohen, Culver and Williams' depositions; (3) medical reports from Drs. Williams, Stokes, Faust, and Brent; (4) Dr. Rennie Culver's psychiatric records on Claimant; (5) Tulane Medical Center notes; (6) Dr. Barbee's, with the LSU medical center, records on Claimant's psychiatric treatment with him; (7) Dr. Arshad's, with the Methodist Psychiatric Pavilion, records on Claimant's psychiatric treatment with him; (8) Claimant's Social Security Administration records; and, (9) Ms. Favaloro's July 28, 1999 vocational rehabilitation report on Claimant. (CX-8, p. 15). Upon his February 11, 2000 meeting with Claimant, Meunier also took a detailed history from Claimant. (DX-25, p. 29).

Claimant informed Meunier that he had pain in his left wrist worse than the right. (DX-25, p. 32). He also stated that he had pain in his left hand, the lower palm and shooting pains from the hand into his arm. (DX-25, p. 33). Claimant stated further that the pain in his left hand is a six most of the time and his right a four, on a scale of one to ten. (DX-25, p. 33).

Meunier was unable to determine whether Claimant had transferable job skills that he had acquired in the past, because he could not determine at what exertional level Claimant was going to be released to return to work. Meunier acknowledged that the FCE showed Claimant could perform light duty work, but Meunier was concerned about whether Claimant could maintain that exertional level of work due to Claimant's reports of continued pain in his hands. (DX-25, pp. 34-35, 59).

In his report, Meunier stated that he contacted Schmidt after he received the FCE to question Schmidt about his findings and wrote that Schmidt admitted he could not predict Claimant's ability to maintain an extertional level of work over time. (CX-8, p. 2). Conversely, Schmidt testified that upon receiving that phone call from Meunier, Schmidt affirmed his original opinion, that Claimant could return to work with restrictions on his wrists and hands and Claimant could maintain such employment. (DX-29, pp. 72-74). Furthermore, Schmidt considered Claimant's subjective complaints of pain and subjective representations about his abilities upon rendering his opinion that Claimant could work certain jobs.

Meunier administered Claimant the Wide Range Achievement Test, which is an academic skills test, an Interest Inventory Test, which is a self-directed search, and the Purdue Pegboard, which is a test of finger dexterity. (DX-25, p. 36). Claimant tested at a post high school level on the Wide Range Achievement Test, which is in the average range, with Claimants's reading comprehension probably being at least in the average range. (DX-25, p. 38). Meunier opined that Claimant's work history is the best indicator of his intellectual ability and ability to learn. (DX-25, p. 41). Meunier classified Claimant as a skilled tradesman based on Claimant's electrical and carpentry work for Employer. (DX-25, p. 42). Most

of The Wide Range Achievement Test was a written test. Meunier stated that Claimant took frequent breaks during the test because his hand would freeze up, further demonstrating Claimant's limited use of his right hand, although Claimant was obviously able to use that hand to write. (DX-25, pp. 53-54). Claimant also scored low on the pegboard test, indicating to Meunier that Claimant has some limitations with regard to finger dexterity. (DX-25, pp. 48-50).

Still, Meunier testified that he would defer to Claimant's physicians regarding his physical restrictions. Yet, Meunier opined that the rehabilitation counselor appropriately determines a person's ability to work. (DX-25, p. 56). Moreover, Meunier questioned the light duty restriction release given by Claimant's various physicians and even by the physical therapist that Meunier referred Claimant to for the FCE. (DX-25, p. 57). Meunier maintained reservations about Claimant's ability to return to light duty employment, although he was released by several physicians to do so, as well the FCE indicated that Claimant could perform light duty work.

Meunier testified that if Claimant received a medical report specifically stating there were no restrictions in his right hand, he could write as much as he wanted to and do light things, including grasping and handling with his right hand, it was likely that Claimant could acquire and maintain light duty employment. (DX-25, p. 78). Accordingly, Meunier did not perform a labor market survey because he had not received such a release from Claimant's treating physician releasing Claimant to light duty work. (DX-25, p. 80).

Meunier opined that Claimant could perform the jobs identified by Favaloro in labor market surveys not requiring the use of his hands, however, he was skeptical that such jobs existed. (DX-25, pp. 80-83). In his experience, ninety-two percent of all jobs require frequent or constant use of the hands. (DX-25, p. 83). Converse to Favaloro's opinion, Meunier testified that in his opinion, Claimant was interested in returning to work. (DX-25, p. 84). Finally, Meunier noted that Claimant's psychological problems have interfered with his ability to maintain employment in the past and continue to present problems for Claimant. (DX-25, p. 85).

C. Emile Schmidt

On March 29 and 30, 2000, at the request of Meunier, Claimant's choice of a vocational rehabilitation counselor, Claimant underwent a comprehensive FCE at Riverside Rehabilitation conducted by Schmidt. (DX-29, p. 17). At the conclusion of this two-day exercise, Schmidt issued a report wherein he concluded Claimant was functioning within the light physical capability level, as indicated by the test results. (CX-13). Furthermore, Claimant's prognosis for returning to work within the light physical demand level was good, even with consideration given to the limited use of his hands and wrists.

Schmidt is a certified physical therapist licensed to practice physical therapy in the State of Louisiana since 1990. (DX-29, p. 8). Furthermore, he has acquired, through experience, a particular degree of skill and ability in performing FCEs that would allow him to identify himself as an expert in FCEs. (DX-29, p. 15). Schmidt explained that an FCE is a physical assessment, which is done to determine the physical capability level of the client in order to develop a baseline of the client's functional capabilities and determine what their capacity to perform work is in the work force. (DX-29, pp. 18-19). The FCE involves both subjective and objective testing. The test is generally performed over two days in order to allow the physical therapist the opportunity to determine his client's ability to perform work in a continuous manner and, specifically, whether the client can perform continuously on a job. (DX-29, pp. 48-49).

Prior to his March 2000, evaluation of Claimant, Schmidt reviewed the medical reports of Dr. Stokes and Dr. Faust. (DX-29, p. 20). He also obtained a history from Claimant, which was consistent with the medical documents. (DX-29, pp. 22-23). Based on the information provided, the focus of the FCE was Claimant's ability to use his wrists. (DX-29, p. 24).

The first test performed was a musculoskeletal test indicative of strength. (DX-29, p. 25). On the right wrist, Claimant was graded as a two, which would be 50 percent within normal limits for flexing and extending strength. (DX-29, pp. 27-28). Schmidt's findings with regard to supination and pronation of Claimant's right wrist were 75 percent within normal limits. (DX-29, p. 29). On the left wrist, Claimant was 25 percent within normal limits for flexing and extending strength. (DX-29, pp. 29-30). Schmidt's findings with regard to supination and pronation of Claimant's left wrist were 50 percent within normal limits.

Schmidt also administered musculoskeletal tests, with the Jamar hand gauge, indicative of strength in Claimant's hands and digits. (DX-29, p. 30). On the right hand, Claimant was 75 percent within normal limits for flexing strength and 50 percent within normal limits for extending strength. (DX-29, p. 31). On the left hand, Claimant was 50 percent within normal limits for flexing and extending strength. (DX-29, p. 32). In the musculoskeletal tests for his shoulders, elbows, and lower extremities, Claimant was within normal limits. (DX-29, p. 33).

A flexibility test was also performed on Claimant's wrists. (DX-29, p. 34). This objective test measures the mobility in the joint for allowing a person to move his joint through the available range of motion without resistance on the movement. (DX-29, p. 35). As to Claimant's right wrist, he could flex and extend at 50 percent; with regard to his left wrist, he tested at 25 percent. (DX-29, p. 35). Schmidt's findings with regard to supination and pronation of Claimant's right wrist were 75 percent within normal limits and with regards to his left wrist, findings were 50 percent within normal limits. (DX-29, pp. 35-36). With regard to the digits of both hands, Claimant had full flexibility without resistance. (DX-29, p. 36).

In the flexibility tests for his shoulders, elbows and lower extremities, Claimant was within normal limits.

A Symptom Magnification Test was also performed on Claimant, which indicated that he was giving maximal effort. (DX-29, pp. 37-38). Next, Claimant performed a Jamar Hand Graph and the results indicated that Claimant gave maximal effort. This test showed that Claimant's right upper extremity was stronger than his left. (DX-29, pp. 39-42). Claimant was able to perform that test with up to 57.2 pounds of resistance with the right wrist and hand and with up to 47.2 pounds of resistance with the left wrist and hand.

A pain evaluation was also performed, which is both a subjective and objective test. (DX-29, p. 42). The results of Claimant's pain evaluation were deemed appropriate by Schmidt. (DX-29, pp. 43-44). Based on a subjective nonmaterial handling test, Claimant could occasionally bend, squat, kneel, crawl and reach above his shoulders, as well as balance 25 feet. (DX-29, p. 47). Claimant could sit, stand and walk frequently. A Material Handling Test was also administered, which indicated that Claimant could occasionally lift up to 40 pounds. (DX-29, p. 52).

Schmidt testified that he had no reason to believe Claimant could not acquire and maintain continuous light duty work. (DX-29, pp. 57-58). Schmidt affirmed that at the time of his July 18, 2000 deposition concerning the instant claim, his opinion had not changed in any way concerning that issue. Finally, Schmidt thought it was important to note that Claimant's primary limitations were in his left wrist, as opposed to his right wrist. (DX-29, p. 69). Because Claimant is right-hand dominant, it would be beneficial to job placement, that he had minor right-hand limitations. (DX-29, pp. 69-70). Schmidt testified that upon receiving a phone call from Meunier concerning Claimant's ability to maintain employment at the light exertional level, Schmidt affirmed his original opinion, that Claimant could return to work with restrictions on his wrists and hands and Claimant could maintain such employment. (DX-29, pp. 72-74). Furthermore, Schmidt considered Claimant's subjective complaints of pain and subjective representations about his abilities upon rendering his opinion that Claimant could work certain jobs.

VII. CLAIMANT'S MEDICAL TREATMENT

A. Dr. Alfred Friedrichsen

Claimant first saw Dr. Friedrichsen on July 3, 1997, after voicing complaints of pain in his hands and wrists to Employer. At that time, Dr. Friedrichsen, whose specialty is industrial medicine, primarily saw patients as the result of work-related injuries or for pre-employment placement exams. (DX-22, p. 7). On the date of the exam, Claimant's complaints included a sharp shooting pain in the left wrist, a dull ache in

the right elbow joint, as well as bilateral numbness and pain in his fingers and hands. (DX-22, pp.13, 18). Claimant reported to Dr. Friedrichsen that he was taking Klonopin and Wellbutrin, psychoactive drugs. (DX-22, pp. 17-19).

Dr. Friedrichsen diagnosed probable carpal tunnel syndrome and old resolving tennis elbow, recommending that Claimant be treated by an orthopedic surgeon, Dr. Sinclair, or a hand specialist. (DX-22, pp. 18, 20-23, 52-53). He administered an intramuscular steroid injection, prescribed nonsteroidal anti-inflammatories, placed a twenty-pound lifting restriction on Claimant and put Claimant's left wrist in a splint. (DX-22, pp. 26-28).

Dr. Friedrichsen saw Claimant again on September 9, 1997, who presented with recurring wrists pain and reported that he had documented carpal tunnel bilaterally, left worse than right. (DX-22, p. 34). Dr. Friedrichsen limited Claimant's lifting to twenty pounds and referred Claimant to Dr. Stokes. (DX-22, pp. 29-30).

Dr. Friedrichsen last saw Claimant on February 11, 1998, who presented after having had surgery on both hands on November 24, 1997, for his carpal tunnel syndrome. (DX-22, pp. 40-45). Claimant was released to a trial of full duty work, without any restrictions. (DX-22, pp. 45, 47). Dr. Friedrichsen did not recall Claimant reporting that his physical condition was causing him psychological problems. (DX-22, pp. 47-48).

B. Dr. Harold Stokes

On September 16, 1997, Dr. Harold Stokes, who specializes in hand and orthopedic surgery, examined Claimant upon referral by Dr. Steiner. (DX-18, pp. 6, 14). Claimant presented with numbness and tingling in the fingers of both hands. (DX-18, p. 16). As well as examining Claimant, Dr. Stokes took his medical history and completed x-rays, diagnosing Claimant with Stage II-III Kienbock's disease of the left arm and wrist and possible Stage I Kienbock's on the right arm and wrist. (DX-8 pp.15-16). Dr. Stokes specifically asked Claimant whether he had any prior problems with his hands and/or wrists and Claimant denied any such problems. Examination revealed that Claimant had a Tinel's sign over both median nerves at the wrists' flexion creases. (DX-18, pp. 17-19). He also diagnosed Claimant with bilateral carpal tunnel syndrome, which Dr. Stokes related to the Kienbock's disease. (DX-18, pp. 94-95). Dr. Stokes found that Claimant's Kienbock's disease was not related to his employment as an electrician. (DX-18, pp. 20-21).

Dr. Stokes testified that Kienbock's is a developmental disease and usually unrelated to any particular activity. Kienbock's could be infrequently caused by significant trauma, which trauma would have to have been followed by pain and following which Kienbock's may develop and may take several months to manifest. (DX-18, pp. 8, 22, 94-97). Repetitive trauma would not cause Kienbock's disease.

Kienbock's results in fragmentation of the lunate bone, which may impinge upon and reduce the size of the carpal tunnel, causing carpal tunnel syndrome. (DX-18, pp. 10-13, 94-97). Kienbock's can also promote local tendinitis, which causes carpal tunnel. Falling down on outstretched hands could also aggravate Kienbock's disease. (DX-18, p. 12). However, Claimant did not relate any sort of trauma to Dr. Stokes other than the repetitive use of a drill at work and again, repetitive trauma would not cause Kienbock's disease. (DX-18, pp.94-97). Upon his September 16, 1997 examination of Claimant, Dr. Stokes recommended an MRI of Claimant's wrists, opining that Claimant was a surgical candidate. (DX-18, pp. 19-20).

On September 25, 1997, an MRI scan of both wrists was carried out and was consistent with stage III Kienbock's disease of the left wrist. Claimant had a difficult time tolerating the scanning images and the study was incomplete for the right wrist. Still, the radiologist communicated to Dr. Stokes that Kienbock's disease was present in the right wrist. (DX-6, pp. 7-11, 28). Dr. Stokes recommended a carpal tunnel decompression and surgery for the Kienbock's disease, based upon the MRI results. (DX-18, p. 20).

Dr. Stokes saw Claimant again on January 18, 2000, at the request of the Employer/Carrier. (DX-6, pp. 24-30). On that date, Dr. Stokes noted that Claimant had surgery in 1997, including a partial left wrist fusion and bilateral carpal tunnel decompression. (DX-6, p. 28). Dr. Stokes testified that his findings upon examination on that date were consistent with someone whose Kienbock's disease had continued to develop. (DX-18, p. 103). X-ray findings revealed a healed triscaphe fusion on the left with Stage IV Kienbock's disease while the right wrist suggested a Stage II Kienbock's disease. (DX-18, p. 103).

Upon that visit, Dr. Stokes further opined that Claimant had recovered from his carpal tunnel surgery. (DX-18, pp. 105-06). Claimant was still experiencing pain and restrictions in his wrists, which Dr. Stokes attributed solely to Claimant's ongoing Kienbock's disease and not the carpal tunnel syndrome. (DX-18, pp. 106-07, 123).

Dr. Stokes testified that had Claimant only suffered from carpal tunnel syndrome, it is likely that he would have been able to return to work at six weeks postoperative for carpal tunnel decompression.

(DX-18, p. 109). Finally, Dr. Stokes testified that it is unlikely that Claimant's work activity represented an aggravation and/or acceleration of his Kienbock's disease. (DX-18, pp. 109-15).

In short, Dr. Stokes testified that Claimant's carpal tunnel syndrome is related to his Kienbock's disease, which is developmental in nature, rather than due to injury, be it a single episode or cumulative. (DX-18, p. 107). Dr. Stokes testified that Claimant's carpal tunnel syndrome and Kienbock's disease were not work-related. Similarly, any pain that Claimant has is due to his Kienbock's disease and not work-related. (DX-18, p. 133).

C. Dr. Claude Williams

Claimant, without the consent of Employer, sought treatment from Dr. Claude Williams. (TR. 58-61). Claimant was first seen by Dr. Williams on October 17, 1997, after being referred to him by Dr. Harry Johnson. (DX-23, p. 9). Dr. Williams examined Claimant, reviewed Claimant's medical treatment history and x-rays and diagnosed Claimant with bilateral carpal tunnel syndrome and Kienbock's disease, more on the left than the right. (DX-23, p. 11).

On November 18, 1997, Dr. Williams performed a bilateral carpal tunnel release and on November 25, 1997, a limited left wrist arthrodesis. (DX-23, p. 12). Dr. Williams opined that the November 18, 1997 surgery successfully treated Claimant's carpel tunnel syndrome, thus releasing Claimant concerning his carpel tunnel syndrome. (DX-23, pp. 12-13). On February 11, 1998, Claimant requested a release to return to work from Dr. Williams because he was feeling well, which release to light duty work Dr. Williams provided. (DX-23, pp. 14-15). In fact, Dr. Williams testified that his restricting Claimant's activities to light duty was because of his Kienbock's disease. Dr. Williams opined that if Claimant had only suffered from carpal tunnel syndrome, the November 18,

1997 operation outcome would have returned Claimant to his regular occupation. (DX-23, pp. 29, 46). Similarly, residual pain that Claimant experienced was due to his Kienbock's disease. (DX-23, pp. 198-99).

Claimant returned to Dr. Williams on March 9, 1998, complaining of bilateral swelling and stiffness, which the doctor related to his Kienbock's disease. (DX-23, pp. 15, 81). Claimant returned to Dr. Williams again on May 4, 1998, with complaints of intermittent left wrist pain and progressively worsening occasional right wrist pain. (DX-23, pp. 16-19, 176-80). Dr. Williams advised Claimant to use his hands for light activities only and attributed Claimant's pain to Kienbock's disease. Also, upon that May 4, 1998 visit, Claimant informed Dr. Williams that he was planning on going to Louisiana Rehabilitation School for

further training. (DX-23, p. 19). Apparently, Claimant had done some vocational rehabilitation testing, although, Dr. Williams did not receive any testing results.

On July 31, 1998, Claimant presented to Dr. Williams with wrists pains, worse on the left side. (DX-23, pp. 176-77). At that time, Dr. Williams advised Claimant that he would have to undergo a total wrist fusion to alleviate pain.

On April 7, 1999, Claimant presented to Dr. Williams with continued bilateral wrist pain. (DX-23, p. 178). Dr. Williams testified that upon that examination Claimant's left wrist had reached Stage IV of Kienbock's, which is a complete progression of the disease, and the right side exhibited some irregularities, but not total progression of the disease. Dr. Williams opined that if Claimant's carpal tunnel syndrome could have been considered in a vacuum, separate from the Kienbock's disease, the carpal tunnel syndrome had resolved and it alone would not have prevented Claimant from returning to work. (DX-23, pp. 179-80). Dr. Williams continued to treat Claimant through May 21, 1999. (DX-23, p. 185). Dr. Williams testified that he did not refer Claimant to Dr. Brent or any other physician, nor did he refuse to treat or refuse to see Claimant at any time. (DX-23, pp. 180-88).

Dr. Williams reviewed Dr. Stokes' and Dr. Brent's recommendations for treating Claimant's Kienbock's disease, which included a proximal row carpectomy and a complete wrist fusion. (DX-23, 196-97). Dr. Williams explained that the former involves removal of the bones in the proximal row of the wrist bones, which makes the wrist more mobile. Conversely, in a complete fusion all the wrist bones are solidified into one bone that is connected to the radius or forearm bone. Both procedures are designed to alleviate pain. (DX-23, p. 36).

Dr. Williams agreed with Dr. Stokes in that Kienbock's disease is a developmental condition. (DX-23, p. 40). It can lead to progressive changes without working, although, the cause of the disease is unknown and the most effective treatment has not been proven. (DX-23, pp. 25, 57). Furthermore, the condition can be aggravated by certain things or it can progress without

aggravation. (DX-23, p. 195). Dr. Williams testified that to his knowledge there was no traumatic event, specific posture or tool and/or situation that occurred during Claimant's employment to explain Kienbock's disease or an aggravation of it. (DX-23, pp. 23, 43, 84, 170). Still, Dr. Williams opined that Claimant's employment aggravated his Kienbock's. (DX-23, p. 216). Yet, Dr. Williams also testified that Claimant's condition could have been the same whether he had ever worked for Employer. (DX-23, p. 217). Dr. Williams further testified that Claimant's Kienbock's disease was not caused by his working as an electrician for Employer unless he sustained an injury, which Claimant had not reported sustaining such an injury to Dr. Williams. (DX-23, p. 84).

Dr. Williams testified that upon his last visit, Claimant advised him that he did not wish to undergo any type of surgical procedure. (DX-23, pp. 220-21). Dr. Williams testified that Claimant could not return to his previous employment due to his Kienbock's disease. (DX-23, pp. 223-24). Moreover, Dr. Williams was not asked to review any alternative jobs by Employer that Claimant could possibly perform. (DX-23, pp. 222-23).

D. Dr. Walter Brent

Subsequent to treatment by Dr. Williams, Claimant next sought treatment from Dr. Brent, who first examined Claimant on August 12, 1998, for the purpose of providing a second opinion. (DX-27, p. 23). Dr. Brent explained that Kienbock's disease is a vascular necrosis in the lunate bone in the wrist. Necrosis causes deterioration of the bone, which deterioration takes an indeterminate period of time. (DX-27, pp. 7-8). Kienbock's is a degenerative condition of the wrists. (DX-27, p. 10). Dr. Brent testified that there are several treatment options for Kienbock's, including rest, drilling into the cyst in an attempt to stimulate blood formation, a bone graft, a wrist fusion or the removal of the proximal row of the bones in the carpal. (DX-27, pp. 9-10). In Dr. Brent's opinion, Kienbock's can be caused by trauma or it can be idiopathic. (DX-27, pp. 11).

Claimant reported to Dr. Brent that he began having problems about the year before, for which he initiated treatment with Dr. Williams and had several surgeries, yet he continued to experience bilateral wrist pain. (DX-27, pp. 16-19). Claimant did not identify a specific incident that caused the onset of his wrist pain nor did he give Dr. Brent a history of psychological problems.

On that August 12, 1998 visit, Dr. Brent took x-rays of both wrists, which revealed Kienbock's disease of the left wrist. (DX-27, pp. 20-21). He saw no evidence of Kienbock's in the right wrist. However, he did not see the MRI that had been previously performed. (DX-27, p. 21).

Upon examination, Dr. Brent noted swelling and limited motion in the left wrist, which was painful to pressure. Dr. Brent also noted that the right wrist had pain on motion and that Claimant was tender over the carpal areas. Dr. Brent's diagnosis was Kienbock's in the left wrist and an attempted fusion that had failed, as well as pain and limitation in the right wrist. (DX-27, pp. 24, 26).

Dr. Brent recommended a full wrist fusion to relieve Claimant of his left wrist pain and continued conservative treatment for Claimant's right wrist. (DX-27, pp. 25-26). Dr. Brent referred Claimant back to Dr. Williams for treatment. (DX-27, p. 23).

Due to Claimant's reports of pain, the restrictions on the right wrist included no lifting over 10 to 15 pounds, with occasional lifting up to 30 pounds. (DX-27, pp. 25, 29-30). Dr. Brent assigned a 100% loss of use of Claimant's left wrist due to the pain, swelling and limited motion. (DX-27, p. 31). Assuming that Claimant underwent the wrist fusion, Dr. Brent opined that Claimant's activities would remain restricted

from working with heavy machinery and lifting heavy objects. (DX-27, pp. 25-30). Furthermore, Dr. Brent recommended a Functional Capacities Evaluation to determine Claimant's functional ability. (DX-27, pp. 26, 31).

Dr. Brent attributed the pain in the left wrist to Claimant's Kienbock's disease and the pain in the right wrist to the soft tissue from the carpal tunnel. (DX-27 p. 30). Nonetheless, Dr. Brent attributed most of Claimant's problems to Kienbock's disease. (DX-27, p. 31). With regard to causation, Dr. Brent opined that Kienbock's disease predated Claimant's workplace injury, but with continued usage Claimant was more susceptible to becoming symptomatic. (DX-27, p. 36).

On June 16, 1999, Claimant saw Dr. Brent again for another opinion and due to continued bilateral wrist pain. (DX-27, pp. 64-69, 93). Dr. Brent reviewed an MRI of Claimant's wrists that had been completed on May 4, 1999. Dr. Brent again recommended a left wrist fusion, noting continued and marked degenerative changes in the left wrist, as well as degenerative changes in the right wrist. Dr. Brent recommended continued use of anti-inflammatories to treat the right wrist.

On November 8, 1999, Claimant presented to Dr. Brent with continued bilateral wrist pain. Dr. Brent completed x-rays, which revealed degenerative changes in the right wrist joint and the scaphoid in the left wrist had further deteriorated. (DX-27, pp. 65, 98). Dr. Brent referred Claimant to Dr. Faust for an evaluation for possible left wrist surgery, as Claimant expressed that he did not want to return to Dr. Williams for treatment.

E. Dr. Donald Faust

Dr. Donald Faust, Claimant's treating physician, is an orthopedist specializing in hand surgery. (DX-30, pp. 5-6, 34). He first examined Claimant on January 4, 2000, based on a referral from Dr. Brent. (DX-30, pp. 9, 15-16, 39). Dr. Faust reviewed Claimant's treatment by Drs. Stokes, Williams and Brent. Claimant presented with bilateral wrist pain, numbness, a problem with dropping things, pain with wrist motion and a grinding in his wrists, as well as constant use of a brace, more on the left than the right. (DX-30, p. 11, 14). Claimant did not relate the wrist pain to a particular event or trauma. (DX-30, p. 12).

X-rays were taken by Dr. Faust which revealed a fragmented lunate bone on the left side. (DX-30, pp. 17-19). The x-rays also showed a fusion between the scaphoid, the trapezium and the trapezoid. The right hand appeared normal. With regards to Claimant's left wrist, Dr. Faust diagnosed Kienbock's disease and status post wrist fusion and bilateral carpal tunnel surgery. (DX-30, p. 20). With regard to the right wrist, Claimant had slight restriction of motion. (DX-30, p. 21).

Dr. Faust testified that Claimant's Kienbock's disease was probably not job related. (DX-30, pp. 23-25). Dr. Faust testified that Kienbock's is progressive and will get worse over time without intervening

trauma. (DX-23, p. 22). Furthermore, Kienbock's disease could be caused where the blood vessel died and/or caused or aggravated because of one traumatic event or due to many little traumatic events, repetitive and over a period of time. (DX-30, pp. 30, 39-40). Moreover, Dr. Faust related Claimant's pain complaints to his Kienbock's disease, as opposed to his carpal tunnel syndrome. (DX-30, p. 31).

In addition, Dr. Faust felt that Claimant was employable, although Claimant should avoid heavy duty work. (DX-30, pp. 26-27). After reviewing the FCE completed on Claimant in March 2000, Dr. Faust agreed that Claimant could return to work in a light duty capacity. (DX-30, p. 28).

On April 19, 2000, after reviewing Claimant's previously completed x-rays and MRI, Dr. Faust opined that Claimant did not have Kienbock's disease in his right wrist and that the only diagnosis with regard to the right wrist was postsurgical carpal tunnel. (DX-30, pp. 31-33).

On May 16, 2000, Claimant presented to Dr. Faust with no pain in his right hand, pain in his left hand and improvement in the strength of both hands. Claimant asked Dr. Faust to be his treating physician. (DX-30, p. 34). Claimant was wearing a brace on his left hand and examination revealed callouses of the right hand more than on the left. (DX-30, pp. 34-35). Dr. Faust prescribed Darvocet to alleviate pain. (DX-30, p. 36).

On June 21, 2000, Claimant presented to Dr. Faust with consistent pain complaints in his left hand and complaints of pain in his right thumb. (DX-30, pp. 36-37). Dr. Faust gave Claimant a brace for his right hand and again prescribed Darvocet. (DX-30, p. 37). Dr. Faust has not seen Claimant since that date. (DX-30, p. 38).

Dr. Faust opined that Claimant had reached MMI with regard to his right wrist and regarding carpal tunnel symptoms and the resulting bilateral wrist problems. (DX-30, p. 38). Claimant could return to light duty work in his then present condition. (DX-30, pp. 46-47). However, it was his opinion that Claimant had an ongoing problem with his left hand and wrist, for which surgery was a treatment option. (DX-30, p. 38). Moreover, Dr. Faust testified that should Claimant return to work after reaching MMI with regard to the left wrist, it would not be unexpected for him to experience pain with use of his hands. (DX-30, pp. 41-42). If Claimant should elect to pursue the treatment

option of surgery to the left wrist, Dr. Faust was of the opinion that it would give him pain relief, although potential wrist functioning, following an optional surgery, is a subjective thing which Dr. Faust could not quantify, but Claimant's left wrist would not be normal. (DX-30, pp. 43-45).

VIII. CLAIMANT'S PSYCHIATRIC TREATMENT

A. Dr. Alvin Cohen

On September 22, 1995, Dr. Cohen evaluated Claimant for the Social Security Disability Determinations Office. (DX-19). Claimant related a history of ongoing panic attacks, which Claimant reported were not controlled by medication. Claimant presented with a history of substance and alcohol abuse, temper flare ups and mood swings. Claimant stated that he had difficulty keeping jobs, having quit his last job of only four months after having a fight with his boss. Claimant's work ability was impeded by attacks of anxiety and panic, lasting varying lengths of time and occurring at varying frequencies. Dr. Cohen diagnosed Claimant with generalized panic attacks, personality disorder and substance/alcohol abuse. Dr. Cohen's prognosis concerning Claimant was guarded.

B. Dr. M. Kaleem Arshad

On May 7, 1997, Claimant began treatment, for his longstanding psychological problems, with Dr. M. Kaleem Arshad, a board certified psychiatrist, upon a referral from his general practitioner. (CX-11, pp.13, 42). Dr. Arshad testified that he saw Claimant approximately eight times over a two-year period, with the last visit being on July 12, 1999. His treatment included therapeutic sessions, medication and follow-up treatment. (CX-11, p. 46). Dr. Arshad recommended that Claimant follow-up with a counselor on a regular basis, which Claimant failed to do. In fact, Dr. Arshad described Claimant as noncompliant with follow-up care and testified that Claimant missed appointments. (CX-11, p. 47).

Dr. Arshad requested that Claimant provide him with medical records regarding his prior psychological history. Yet, Claimant failed to provide Dr. Arshad with such records. (CX-11, p. 54). The only records that Dr. Arshad reviewed were from one of Claimant's orthopedic physicians. (CX-11, pp. 54-55). In fact, Dr. Arshad testified that Claimant appeared reluctant for Dr. Arshad to contact Claimant's other healthcare providers. (CX-11, pp. 55-56).

Specifically, Claimant did not provide Dr. Arshad with a copy of a January 17, 1991 Social Security Administration Intake Assessment, which had been completed by Mr. Wester Perret in conjunction with Claimant's application for disability benefits. (CX-11, pp. 57-58). The January 17, 1991 assessment stated that Claimant presented with relationship problems due to lack of employment. He also reported panic attacks, which had affected all areas of his life. (CX-11, p. 59). Claimant was deemed to have major impairments in employment and in his personal relationships due to his panic attacks. He was abusing alcohol and avoiding employment and social situations to cope with anxiety and panic. (CX-11, pp. 61-62).

Claimant also failed to provide Dr. Arshad with a copy of a Tulane University Hospital Emergency Room report dated April 6, 1987, when he had presented with depression and anger, to the point of

experiencing homicidal ideation. (DX-13; CX-11, pp. 63-64). Claimant revealed to Dr. Arshad that he had suicidal thoughts in the past, but mentioned no past homicidal thoughts. (CX-11, p. 65). Claimant gave a history of being diagnosed with panic and anxiety disorders at the age of five years old and reported that he had received treatment for such. (CX-11, p. 49). As well, Claimant advised Dr. Arshad that he was occasionally unable to maintain employment because of his panic attacks. (CX-11, pp. 86-87). In fact, Claimant admitted to Dr. Arshad that panic attacks and anxiety had basically included all areas of his life. (CX-11, p.91).

Dr. Arshad testified that Claimant's previous records validated his diagnosis and assessment that Claimant was suffering from agoraphobia, anxiety and panic disorder and some level of depression. (CX-11, pp. 65-88, 107).

Dr. Arshad prescribed Claimant various medications during the course of Claimant's treatment with Dr. Arshad, such as Klonopin, Wellbutrin, and Zoloft. (CX-11, p. 95). Claimant was noncompliant at times about taking his medications because of the side effects or due to the fact that he did not follow-up with an appointment needed to get a prescription refill. (CX-11, pp. 96-97). Finally, Dr. Arshad concluded that Claimant's pre-existing psychological condition was not caused by, but may have been aggravated by his injuries to his hands allegedly sustained while working for Employer. (CX-11, pp. 103-08, 124). Dr. Arshad testified that his diagnosis of Claimant upon their last appointment was major depression in addition to anxiety and panic disorder. (CX-11, p. 129).

Upon his initial May 7, 1997 visit with Dr. Arshad, Claimant did not make any complaints of wrist pain or wrist problems. Claimant informed Dr. Arshad that he had attended community college and had been working for Employer. Claimant presented with significant stress due to marital problems and referenced that he had trouble in the past maintaining regular employment. (CX-11, pp. 51-53). Claimant did not see Dr. Arshad again until fifteen months later, on October 8, 1998, when Claimant advised Dr. Arshad that he sustained a wrist injury while employed by Employer. (CX-11, p. 50). As state above, Claimant has not seen Dr. Arshad since July 12, 1999.

C. Dr. Rennie Culver

Dr. Culver, an expert in psychiatry, examined Claimant on April 22, 1999, for about 2 ½ hours. (DX-28, p. 27). Dr. Culver defined panic disorder as a mental illness in which the patient begins to experience and continues to experience episodes of severe anxiety characterized by extreme fear without there being a palpable cause of that fear. (DX-28, p. 22). The attacks, according to Dr.

Culver, are accompanied by feelings of doom and often by feelings that one is going to die. (DX-28, p. 23). Dr. Culver distinguished a panic disorder from an anxiety disorder, with the latter being a more

general kind of panic disorder in which the patient experiences intermittent or chronic anxiety, but not of the same degree of intensity as when one is having a panic attack. (DX-28, p. 23).

Dr. Culver also examined extensive records of Claimant's physicians and healthcare providers and reviewed Claimant's deposition. (DX-28, pp. 28, 30). Dr. Culver made several diagnosis, including panic disorder, agoraphobia, alcoholism, desponic disorder, which is a form of depression, generalized anxiety disorder, either a learning disorder or an attention deficit disorder and some type of personality disorder, which in Dr. Culver's opinion has been ongoing since childhood. (DX-28, p. 32). Dr. Culver opined that Claimant has not been free of his anxiety disorder for any significant period of time since the age of five. (DX-28, pp. 32-33).

Claimant also gave Dr. Culver a history of being treated at various health care facilities, including participation in a study at LSU with Dr. Barbee regarding the effectiveness of Xanax. (DX-28, p. 33). Claimant informed Dr. Culver that he had entertained suicidal ideation, but that he had not thought of suicide in a number of years. (DX-28, pp. 33-35). Claimant further informed Dr. Culver that he had protracted periods of unemployment due to depression and anxiety. (DX-28, pp. 35-37). Furthermore, Dr. Culver testified that testing showed Claimant to have a full scale IQ of 125, thus enhancing his basic capacity to learn and placing him in a superior level of intellectual functioning. (DX-28, pp. 44, 722).

Claimant informed Dr. Culver that he drank a box of wine a week and admitted that he had a drinking problem. (DX-28, p. 49). He told Dr. Culver that his panic attacks were relieved by alcohol. Dr. Culver concluded that Claimant was self-medicated with alcohol to some degree. (DX-28, pp. 49-50). Claimant admitted to having a problem with alcohol consumption that dated back to at least the age of sixteen years old. Claimant reported having once gone for a month without leaving the house, indicating severe agoraphobia. (DX-28, pp. 51-52).

Dr. Culver characterized Claimant's psychological condition as chronic, disabling and severe and no better or worse than it has ever been. (DX-28, p. 52). Dr. Culver testified further that Claimant never informed him that his panic attacks had gotten worse since starting work for Employer or since he began having problems with his wrists. (DX-28, pp. 54-55, 71-73). In fact, Dr. Culver opined that Claimant's employment by Employer could have ended at any time, without any wrist injuries, based on his extensive history of losing employment due to panic attacks which occurred without any known trigger. (DX-28, pp. 87-89). In short, Dr. Culver testified that Claimant's present mental condition is neither more nor less that what it has been for many years, noting extensive documentation of Claimant's preexisting, ongoing and longitudinal mental disorders. (DX-28, pp. 720-23).

D. Wester Perret, Jr.

Wester Perret (Perret), board certified social worker, first saw Claimant on January 17, 1991. (DX-24, pp. 9, 22). Perret performed his assessment of Claimant over a two-day period, including January 17, 1991 and January 24, 1991, with each session lasting fifty minutes. (DX-24, p. 46). Claimant informed Perret he had seen Dr. Jansen, a neurologist, who recommended that Claimant seek help for panic attacks. (DX-24, p. 22). Claimant was accompanied by his wife upon his January 17, 1991 visit with Perret. Mrs. Scuderi advised Perret that her husband's panic attacks were affecting their marriage. (DX-24, p. 23).

Claimant reported panic concerns for six years as of the date of Perret's January 1991 assessment. (DX-24, p. 52). Yet, Perret testified that he did not obtain any information from Claimant or his wife as to whether the panic attacks were affecting his ability to work and/or maintain employment. (DX-24, p. 25). Reportedly, Claimant's panic attacks were accompanied by agoraphobia, which Perret characterized as a fear of open places. (DX-24, p. 25). Claimant told Perret he was unemployed at the time of Perret's evaluation of Claimant and that he feared the employment application process. Yet, Claimant related no fear of applying for a job where he had experience. (DX-24, p. 27). Consequently, Perret opined that new experiences were threatening to Claimant. (DX-24, p. 28).

Claimant reported drinking one case of beer each week and five liters of wine every three days. In Perret's opinion, Claimant's use of alcohol was a coping mechanism. (DX-24, p. 30). Perret stated that Claimant's alcohol use raised a question of alcohol abuse. (DX-24, p. 40). Perret referred Claimant to Family Services of Greater New Orleans, who would see Claimant on a sliding scale fee basis. (DX-24, pp. 41-42, 60-61). Perret also referred him to Dr. Barbee at LSU for participation in a medication study that was being conducted. (DX-24, p. 42).

E. Dr. James Barbee

Upon referral from Perret, Claimant saw Dr. Barbee of LSU Medical Center's Department of Psychiatry for panic disorder from June 12, 1991 to June 6, 1993. (DX-11). Of noteworthy fact, on June 17, 1991, Claimant reported to Dr. Barbee occasional numbness and tingling in his upper extremities and fingertips. (DX-18, p. 52). Claimant had also reported to Dr. Barbee that he experienced pain in his joints. Dr. Barbee diagnosed Claimant as suffering from panic disorder, agoraphobia and depression. Dr. Barbee provided therapeutic treatment and prescribed medication to alleviate the symptoms of Claimant's psychological illnesses. Upon Claimant's last visit to Dr. Barbee on June 6, 1993, Dr. Barbee prescribed medication and instructed Claimant to return to see him in eight weeks, but Claimant failed to do so.

IX. CONTENTIONS OF THE PARTIES

Employer/Carrier contends that Claimant's psychological condition was not caused or aggravated by his work for Employer. Further, Employer/Carrier contends that Claimant's physical injuries were not caused or aggravated by his work for Employer and Claimant reached MMI on February 11, 1998. Finally, Claimant is not due medical benefits under the Act due to unauthorized physician shopping.

Claimant contends that his working for Employer caused or aggravated his carpal tunnel disease and Kienbock's disease in both wrists, as well as his panic disorder. Further, Claimant asserted that he is permanently and totally disabled, as indicated by the testimony of Drs. Williams, Brent, and Faust, and will remain so as the result of both the work related injury resulting in Kienbock's disease and the aggravation of his preexisting mental condition. Claimant further contends that he is entitled to reasonable and necessary medical care under the Act.

X. DISCUSSION

It has been consistently held that the Act must be construed liberally in favor of the Claimant. Voris v. Eikel, 346 U.S. 328, 333 (1953); J. B. Vozzolo, Inc. v. Britton, 377 F. 2d 144 (D.C. Cir. 1967). However, the United States Supreme Court has determined that the "true-doubt" rule, which resolves factual doubt in favor of the Claimant when the evidence is evenly balanced, violates Section 7(c) of the Administrative Procedure Act, 5 U.S.C. Section 556(d), which specifies that the proponent of a rule or position has the burden of proof and, thus, the burden of persuasion. Director, OWCP v. Greenwich Collieries, 512 U.S. 267, 114 S.Ct. 2251 (1994), aff'g. 990 F.2d 730 (3rd Cir. 1993).

In arriving at a decision in this matter, it is well-settled that the finder of fact is entitled to determine the credibility of witnesses, to weigh the evidence and draw his own inferences therefrom, and is not bound to accept the opinion or theory of any particular medical examiners. Duhagon v. Metropolitan Stevedore Company, 31 BRBS 98, 101 (1997); Avondale Shipyards, Inc. v. Kennel, 914 F.2d 88, 91 (5th Cir. 1988); Atlantic Marine, Inc. and Hartford Accident & Indemnity Co. v. Bruce, 551 F. 2d 898, 900 (5th Cir. 1981); Bank v. Chicago Grain Trimmers Association, Inc., 390 U.S. 459, 467, reh'g denied, 391 U.S. 929 (1968).

A. Claimant's Prima Facie Case

Section 2(2) of the Act defines "injury" as "accidental injury or death arising out of or in the course of employment." 33 U.S.C. § 902(2). Section 20(a) of the Act provides a presumption that

aids the Claimant in establishing that a harm constitutes a compensable injury under the Act. Section 20(a) of the Act provides in pertinent part:

> In any proceeding for the enforcement of a claim for compensation under this Act **it shall be presumed**, in the absence of substantial evidence to the contrary, that the claim comes within the provisions of this Act.

33 U.S.C. § 920(a)(emphasis added).

The Benefits Review Board (herein the Board) has explained that a claimant need not affirmatively establish a causal connection between his work and the harm he has suffered, but rather need only show that: (1) he sustained physical harm or pain, and (2) an accident occurred in the course of employment, or conditions existed at work, which **could have caused** the harm or pain. Kelaita v. Triple A Machine Shop, 13 BRBS 326 (1981), aff'd sub nom. Kelaita v. Director, OWCP, 799 F.2d 1308 (9th Cir. 1986); Merrill v. Todd Pacific Shipyards Corp., 25 BRBS 140 (1991); Stevens v. Tacoma Boat Building Co., 23 BRBS 191 (1990). These two elements establish a **prima facie** case of a compensable "injury" supporting a claim for compensation. Id.

Once Claimant's **prima facie** case is established, a presumption is invoked under Section 20(a) that supplies the causal nexus between the physical harm or pain and the working conditions which could have cause them. The burden shifts to the employer to rebut the presumption with substantial countervailing evidence which establishes that Claimant's employment did not cause, contribute to or aggravate his condition. Gooden v. Director, OWCP, 135 F.3d 1066 (5th Cir. 1998); Peterson v. General Dynamics Corp., 25 BRBS 71 (1991). "Substantial evidence" means evidence that reasonable minds might accept as adequate to support a conclusion. E & L Transport Co. v. N.L.R.B., 85 F.3d 1258 (7th Cir. 1996).

Employer must produce facts, not speculation, to overcome the presumption of compensability. Reliance on mere hypothetical probabilities in rejecting a claim is contrary to the presumption created by Section 20(a). See Smith v. Sealand Terminal, 14 BRBS 844 (1982). The presumption is not rebutted merely by suggesting an alternative way that Claimant's injury may have occurred. Williams v. Chevron, USA, 12 BRBS 95 (1980). Rather, the presumption must be rebutted with **specific and comprehensive medical evidence** proving the absence of, or severing, the connection between the harm and employment. Hampton v. Bethlehem Steel Corp., 24 BRBS 141, 144 (1990); Holmes v. Universal Maritime Service Corporation, 29 BRBS 18, 21 n.3 (1995). If the Employer rebuts the presumption, the administrative law judge must weigh all of the evidence and resolve the causation issue based on the record as a whole. Devine v. Atlantic Container Lines, G.I.E., 23 BRBS 279 (1990).

In this case, Claimant sustained a physical harm and pain as established by the record, including, but not limited to the medical evidence as presented by Drs. Arshad, Brent, Culver, Faust, Friedrichson, Stokes and Williams and conditions existed at work which could have caused the harm or pain. Thus, Claimant established his **prima facie** case, creating a presumption under Section 20(a) that his injury arose out of employment. To rebut the presumption Employer is required to present substantial evidence severing the connection between such harm and employment or working conditions.

Claimant suffers from Kienbock's disease, a developmental disorder which would have progressed in Claimant even in the absence of any stress or trauma to the wrist. (DX-23, DX-18; DX-30). Dr. Williams testified that the cause of Kienbock's disease is entirely unknown and agreed with Dr. Stokes in that Kienbock's disease is a developmental condition, which can lead to progressive changes without working. (DX-23, pp. 57, 195). Dr. Williams further testified that Claimant's Kienbock's disease was not caused by his working as an electrician for Employer unless he sustained a traumatic injury, which Claimant had not reported sustaining such an injury to Dr. Williams. (DX-23, p. 84). Dr. Brent opined that Claimant's Kienbock's disease predated Claimant's alleged workplace injury. (DX-27, p. 36).

Dr. Stokes testified that Claimant's carpal tunnel syndrome was caused by his Kienbock's disease, which is developmental in nature, rather than due to injury, be it a single episode or cumulative. (DX-18, p. 107). Dr. Stokes testified that Claimant's carpal tunnel syndrome and Kienbock's disease were not work-related. In addition, Dr. Stokes concluded that Claimant's carpal tunnel syndrome pre-existed his work for Employer. Moreover, any pain that Claimant had was due to his Kienbock's disease and not work-related. (DX-18, p. 133).

Nonetheless, Drs. Stokes and Faust opined that Kienbock's could be infrequently caused or aggravated by significant trauma. (DX-18, pp. 8, 22, 94-97; DX-30, pp. 21-22). Still, Dr. Stokes testified that it is unlikely that Claimant's work activity represented an aggravation and/or acceleration of his Kienbock's disease. (DX-18, pp. 109-15). Dr. Faust testified that Kienbock's is progressive and will get worse over time without intervening trauma, as such Claimant's Kienbock's disease was probably not job-related. (DX-30, pp. 22-25). Moreover, Dr. Faust related Claimant's pain complaints to his Kienbock's disease, as opposed to his carpal tunnel syndrome. (DX-30, p. 31).

At no time prior to the hearing on the instant matter did Claimant advise any of his treating physicians, nor did he advise Employer during the two times that he was deposed, that he recalled a specific trauma to his wrists. (TR. 82). Furthermore, Couch, testified that he had no knowledge of Claimant reporting a particular incident that caused pain and/or trauma to his wrists. (CX-16, p. 11). Although, Claimant testified that he sustained a workplace accident on an unspecified date and that the incident was brought to the attention of Couch, he admitted that he never completed a report of any wrists' injury. (TR. 50-52, 81). Moreover, Dr. Stokes' medical reports specifically stated that

Claimant did not relate a distinct trauma to his wrists. (DX-6, p. 10). Also, Dr. Williams' March 10, 1998 report stated that Claimant had not reported sustaining a workplace injury. (DX-7, p. 2). Similarly, Dr. Faust's records indicated that Claimant did not relate his wrists' pain to a particular event or trauma. (DX-30, p. 12). In addition, Dr. Brent's records indicated that Claimant did not identify a specific incident that caused the onset of the pain in his wrists.

Claimant admitted that he never reported to any physician that he sustained an accident or trauma to his wrists and when a physician asked, Claimant specifically stated that he had not sustained such. (TR. 82). Thus, the Court finds that Claimant did not sustain any specific trauma to his wrists which may have caused or aggravated his Kienbock's disease, a developmental condition wholly unrelated to his employment for Employer. Demonstratively, even in the absence of employment, Claimant's condition continued to deteriorate. (TR. 84; DX-18, pp. 109-10; DX-23, p. 217).

Moreover, Claimant exhibited symptoms related to carpal tunnel syndrome dating back to a June 17, 1991, examination by Dr. Barbee, when Claimant reported occasional numbness and tingling in his upper extremities and fingertips. (DX-11). Claimant had also reported to Dr. Barbee that he experienced pain in his joints, all of which significantly predated Claimant's employment for Employer.

The Court finds that Employer rebutted with specific and comprehensive medical evidence through Drs. Stokes, Williams, Faust, Brent and Barbee proving the absence of, or severing, any connection between Claimant's physical maladies and his work for Employer. Claimant's carpal tunnel syndrome is related to his Kienbock's disease, neither of which were work-related. Similarly, any pain that Claimant has is due to his Kienbock's disease and is not work-related. (DX-18, p. 133).

Finally, Claimant's psychological problems were not caused or aggravated by his working for Employer. The Claimant himself established that he suffered from an often disabling panic disorder since the age of five years old. (TR. 91). Prior to his working for Employer, Claimant worked countless jobs, each of which he was required to leave due to his pre-existing psychological conditions. (TR. 95). Consequently, Claimant's psychological problems resulted in protracted periods of unemployment, further compounding interpersonal problems and personal problems for Claimant. Claimant testified that at no time was he told that he was cured of his psychological problems while working for Employer. His psychological problems existed prior to his working for Employer, during his employment there and continued after Claimant ceased working for Employer. (TR. 101-02).

Dr. Culver testified that Claimant's working for Employer did not aggravate his psychological problems. Unlike Dr. Arshad, who was provided with incomplete, erroneous and limited medical records on Claimant's pre-existing psychological condition, Dr. Culver was provided with the entire medical and psychological history of the Claimant, as well as several medical and psychological

depositions taken in connection with the instant hearing. Specifically, Dr. Culver testified that Claimant's present mental condition is neither more nor less that what it has been for many years, noting extensive documentation of Claimant's preexisting, ongoing and longitudinal mental disorders. (DX-28, pp. 720-23).

Conversely, Dr. Arshad concluded that Claimant's pre-existing psychological condition was not caused by, but may have been aggravated by his injuries to the hands allegedly sustained while working for Employer. (CX-11, pp. 103-08, 124).

The Court credits Dr. Culver's opinion, which was corroborated by Claimant and Mrs. Scuderi's testimony, and finds that Claimant's psychological condition is chronic, disabling and severe and no better or worse than it has ever been. (DX-28, p. 52). As demonstrated by Dr. Cohen's records, Claimant has a history of protracted periods of unemployment, related to his long-standing and severe psychological problems, which problems have persisted notwithstanding therapeutic treatment, including medication designed to treat panic disorders, depression and agoraphobia. (DX-19). Furthermore, Dr. Friedrichsen did not recall Claimant reporting that his physical condition was causing him psychological problems. (DX-22, pp. 47-48).

In sum, the Court finds that neither Claimant's psychological condition nor physical maladies, including carpal tunnel syndrome and Kienbock's disease, were caused or aggravated by his work for Employer. As such, Claimant is not due benefits under the Act.

XI. ORDER

IT IS HEREBY ORDERED that Claimant's claim for benefits under the Act is **DENIED**.

So **ORDERED** this 13th day of July 2001, at Metairie, Louisiana.

A

JAMES W. KERR, JR.
Administrative Law Judge

JWK:jmb